



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,036	07/11/2003	Gabi Ben-Ami	3015/1	3068

7590 04/29/2005

DR. MARK FRIEDMAN LTD.
C/O BILL POLKINGHORN
DISCOVERY DISPATCH
9003 FLORIN WAY
UPPER MARLBORO, MD 20772

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/617,036	Applicant(s) BEN-AMI ET AL.	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) 3,5 and 10-19 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1,2,4 and 6-9 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____.

Art Unit: 3727

Claims 1-19 are pending.

Applicant's election with traverse of Group I: Fig. 3 in the reply filed on April 4, 2005 is acknowledged. The traversal is on the ground(s) that independent claim 12 is directed to an unstable container a common feature. This is not found persuasive because the Fig. 3 specie is not directed to a package of receptacles having containers and a packaging arrangement.

The requirement is still deemed proper and is therefore made FINAL.

Applicant chooses claims 1-11 has readable of the elected specie of Group I: Fig. 3. Claim 3 directed to a crown cap, claim 5 directed to a glass bottle, claim 10 directed to an image disposed on the base and claim 11 directed to a handle have been withdrawn because they are directed to species other than the elected specie.

Claims 3, 5 and 10-19 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected specie, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 4, 2005.

Applicant has misunderstood the election of species requirement. Applicant has interpreted the election of Fig. 3 has an election of Fig. 1-4. The examiner did not provide species directed specifically to Fig. 1, 2 and 4 (variant implementations) because there were no claims mutually exclusively directed to these variant implementations. Therefore, Fig. 1, 2 and 4 are separate from Fig. 3 and will not be considered together with Fig. 3.

An action on the merits follows for claims 1, 2, 4 and 6-9

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3727

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Mawhirt et al. (Mawhirt).

Mawhirt discloses a test tube holder with test tubes as shown in Fig. 1, one of the test tubes is an unstable receptacle because the hemispherical, curved base end will not support the test tube in an upright manner without the assistance of the holder.

Claims 1, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Green.

Green discloses a gas washing bottle (10) made of glass which defines an unstable receptacle because its bottom narrows considerably such that the bottle's curved base end will not support the bottle in an upright manner without the assistance of a ring stand. The bottle is stoppered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mawhirt.

Mawhirt discloses the invention except for the ring-pull closure and the metal container material. Official notice is taken that ring-pull closures and metal material are well known. It would have been obvious to apply a different closure to form a more reliable seal until opened. It would have been obvious to modify the material as metal is more durable than other materials

Art Unit: 3727

which can break, such as glass.

Claims 2, 4, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green.


Green discloses the invention except for the ring-pull closure, the metal container material and the hemispherical shape. Official notice is taken that ring-pull closures and metal material are well known. It would have been obvious to apply a different closure to form a more reliable seal until opened. It would have been obvious to modify the material as metal is more durable than other materials which can break, such as glass. There is no criticality to a hemispherical shape as many different curves surfaces other than hemispheres can cause instability. It would have been obvious to change the shape of the base to hemispherical by design choice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc